UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY – NEWARK VICINAGE

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INDEMNITY INSURANCE COMPANY OF NORTH AMERICAN a/s/o ATALANTA CORPORATION, INC.

Plaintiff,

- against -

TAP AIR PORTUGAL,

Defendant.

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Case No: 12 Civ. 5695 (SDW) (MCA)

ANSWER TO COMPLAINT

Defendant Transportes Aereos Portugueses S.A. (incorrectly sued herein as "TAP Air Portugal" and hereinafter "TAP Portugal"), by its attorneys Clyde & Co US LLP, answers plaintiff's Complaint ("Complaint") as follows:

AS TO JURISDICTION

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint, except admits that the claims asserted in this action are governed by a a treaty of the United States known as the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999, ICAO Doc. No. 9740 (entered into force November 4, 2003), *reprinted in* S. Treaty Doc. 106-45, 1999 WL 33292734 (hereinafter "Montreal Convention"), and leaves all questions of law for the Court.

AS TO PARTIES

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 2 and 3 of the Complaint, and leaves all questions of law for the Court.

3. Denies the allegations in paragraph 4 of the Complaint except admits that TAP Portugal is a foreign corporation organized and existing under the laws of Portugal, has a place of business at 340 Brewster Road, Newark, New Jersey 07114, and is a duly certificated foreign air carrier in the business of carriage of passengers, baggage and cargo that conducts flights to and from of New Jersey, and leaves all questions of law for the Court.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint, and leaves all questions of law for the Court.

AS TO RELEVANT FACTS

5. Denies the allegations in paragraphs 6 through 9 of the Complaint except admits that TAP Portugal contracted to transport a shipment of cheese from Lisbon, Portugal to Newark, New Jersey pursuant to TAP Portugal air waybill no. 047-7908-3126 dated June, 6, 2011 (the "Shipment"), that the Shipment was to be kept between 2 and 8 degrees Celsius, and that the Shipment was transported from Lisbon to Newark on TAP Portugal Flight No. TP 103 on June 7, 2011, and leaves all questions of law for the Court.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Complaint.

7. Denies the allegations in paragraphs 11 through 13 of the Complaint, except admits that TAP Portugal received written correspondence providing notice of a claim for damage to the Shipment that bore a date of June 13, 2011.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 14 of the Complaint.

9. Denies the allegations in paragraphs 15 through 17 of the Complaint, and leaves all questions of law for the Court.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

10. The Complaint fails to state a claim against TAP Portugal upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

11. The transportation out of which the subject matter of this action arose was "international carriage" within the meaning of the Montreal Convention, and the rights of the parties are governed exclusively by the provisions of the Montreal Convention.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

12. Pursuant to Articles 18 and/or 20 of the Montreal Convention, as well as TAP Portugal's tariffs, TAP Portugal's conditions of carriage as set forth in the relevant contract of carriage and/or other relevant law, TAP Portugal is not liable to plaintiff for the loss or damage described in the Complaint because the alleged loss or damage (a) did not occur during the period of carriage by air, (b) was caused or contributed to by an inherent defect, quality or vice of the cargo, defective packaging of the cargo and/or the negligence of plaintiff, its agents, servants, or employees, and/or (c) did not occur while the cargo was in TAP Portugal's possession or the possession of its employees or agents.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

13. The liability of TAP Portugal if any, is limited pursuant to Article 22 of the Montreal Convention and/or TAP Portugal's tariffs and conditions of carriage as set forth in the

relevant contract of carriage.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

14. Pursuant to its tariffs and conditions of carriage as set forth in the relevant contract of carriage, and/or the applicable local law, TAP Portugal is not liable to plaintiff or, in the alternative, TAP Portugal's liability is limited.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

15. Plaintiff's alleged damages resulted from the acts or omissions of parties other than TAP Portugal and for whom TAP Portugal is not responsible and, therefore, TAP Portugal is not liable to plaintiff or, alternatively, TAP Portugal's liability to plaintiff is partial only and should be reduced in accordance with applicable law.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

16. The alleged damages complained of were not proximately caused by any negligence or culpable conduct on the part of TAP Portugal.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

17. TAP Portugal is not liable to plaintiff for the loss or damage described in the Complaint because the alleged loss or damage was caused or contributed to by the negligence of plaintiff or its agents, servants or employees.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

18. Plaintiff failed to mitigate its damages, if any, and, therefore, plaintiff is barred from recovering any such damages from TAP Portugal.

AS AND FOR A TENTH
AFFIRMATIVE DEFENSE

19. The alleged damages were caused and brought about by an intervening and superseding cause and were not caused by TAP Portugal, or by a person for whom TAP Portugal is responsible.

NOTICE OF APPLICABILITY OF FOREIGN LAW

Pursuant to Rule 44.1 of the Federal Rules of Civil Procedure, TAP Portugal hereby gives notice that it may raise issues concerning the law of a foreign country in this matter.

WHEREFORE, TAP Portugal demands judgment dismissing the Complaint in its entirety or, alternatively, judgment limiting its liability pursuant to the foregoing, together with costs and disbursements.

LOCAL CIVIL RULE 11.2

I, Bryan P. Couch, hereby certify pursuant to Local Civil Rule 11.2, that the above-captioned matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

Dated: New York, New York
October 16, 2012

CLYDE & CO US LLP

By: ______________________________
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